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9 UNITED STATES DISTRICT COURT
10 WESTERN DISTRICT OF WASHINGTON
11 AT TACOMA

12 KARL J. DAVIS,

13 Petitioner,

14 v.

15 JOHN GAY, *et al.*,

16 Respondents.

Case No. C08-5333 RBL/KLS

ORDER DIRECTING
RESPONDENTS TO SUBMIT
RELEVANT PORTIONS OF
STATE COURT PROCEDURAL
RECORD IN SUPPORT OF
MOTION TO DISMISS

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19 This habeas corpus action has been referred to United States Magistrate Judge Karen L.
20 Strombom pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 1, 3 and 4. Respondents filed a Motion
21 to Dismiss in Lieu of Answer pursuant to 28 U.S.C. § 2244(d) and Fed. R. Civ. P. 12(b)(6). (Dkt. #
22 16). Respondents submitted copies of the judgment and state court opinions relating to Mr. Davis's
23 direct appeal of his 1998 convictions. (Dkt. # 16-2). Along with his response, Petitioner submitted
24 various state court rulings relating to his personal restraint petitions. (Dkt. # 4-2).

25 Based on the record before it, the Court is unable to make a thorough and complete
26 determination of whether Mr. Davis's petition is time-barred. For example, Respondents state that
27 Mr. Davis's convictions became final on November 12, 1999. (Dkt. # 16, p. 1). Petitioner states that
28 his convictions became final on January 11, 2000 when the mandate was issued. (Dkt. # 5, p. 1).

1 The Washington Court of Appeals also refers to the year 2000 as when Mr. Davis's judgment and
2 sentence became final. (Dkt. # 4-2, p. 20). The mandate is not included in the record before the
3 Court. An October 13, 2005 Washington Court of Appeals opinion references a first personal
4 restraint petition by Mr. Davis relating to his 1998 conviction, but there is no copy of an opinion
5 relating to it in the record before this Court.

6 In order to properly determine whether Mr. Davis's petition is time-barred under 28 U.S.C. §
7 2244(d), including whether any § 2244(d)(2) statutory tolling may be applicable, the Court requires
8 the complete state court *procedural* record.

9 Accordingly, it is **ORDERED**:

- 10 (1) Respondents shall provide the Court with the remaining portions of the state court
11 procedural record relating to Mr. Davis's 1998 convictions on or before **October 3,**
12 **2008**; and
- 13 (2) The Clerk shall **re-note** the Petition for Writ of Habeas Corpus (Dkt. # 4) for **October**
14 **3, 2008**; and
- 15 (3) The Clerk shall send copies of this Order to the Petitioner and to counsel for the
16 Respondents.

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18 DATED this 2nd day of September, 2008.
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22 Karen L. Strombom
23 United States Magistrate Judge
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